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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,557	07/31/2003	Charles Lu	185.1002.01	2581
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SWERNOFSKY LAW GROUP PC 548 MARKET ST. SAN FRANCISCO, CA 94104				GOLDMAN, MICHAEL H
ART UNIT		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/632,557	LU ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	MICHAEL H. GOLDMAN	3688	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 30 April 2008.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-13 and 15-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-13 and 15-20 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 27, 2008 has been entered.

**DETAILED ACTION**

2. The following is a Non Final Office Action in response to communications received October 27, 2008. Claims 1 and 2 have been amended. Claim 14 has been cancelled. Therefore, claims 1-13 and 15-20 are pending and addressed below.

***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 1 and 2 and its dependent claims are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Based on Supreme Court precedent, a method/process claim must (1) be tied to another statutory class of invention (such as a particular apparatus) (see at least *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing (see at least *Gottschalk v. Benson*, 409 U.S. 63, 71 (1972)). A method/process claim that fails to meet

one of the above requirements is not in compliance with the statutory requirements of 35 U.S.C. 101 for patent eligible subject matter. . Here the claims fails to meet the above requirements because the steps are neither tied to another statutory class of invention (such as a particular apparatus) nor physically transform underlying subject matter (such as an article or materials) to a different state or thing.

Also see, United State Court of Appeals for the Federal Circuit, 2007-1130,  
(Serial No. 08/833,892)  
IN RE BERNARD L. BILSKI  
and RAND A. WARSAW.

For example in claim 1, the steps of “searching, responsive said at least one...”, “computing an effective price...”, ‘determining at least one ...” etc. should individually incorporate a particular machine (computer, apparatus or hardware per se); otherwise it can be concluded, under a broad interpretation, that those steps were manually performed. Here, to be statutory, under USC 101, each individual step should incorporate or should be performed using a particular machine (computer, apparatus or hardware per se).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 1, 2, 4-9, 11 and 13-20 are rejected under 35 U.S.C. 103(a) as being anticipated by Kraft (20040098377) in view of Catan (6491217).

Claim 1: Kraft discloses a system and method of real-time price comparisons searching for multi-variable information relating to prices by sellers of a selected product, where the multi-variable information includes at least two of the following: a stated price, a coupon or discount applicable to the selected product, a measure of quality for an available item of that selected product, a measure of reputation for a selected seller or manufacturer of that selected product, a shipping cost or type, a tax imposed on purchase of the selected product (see page 1 [0012] lines 5-7 whereby a user/buyer, on a network, can enter specific search requests using **complex search criteria**, which examiner interprets as **multi-variable information**; and examiner also interprets complex as at least two of the above criteria; e.g. reputation for service and (see page 5 [0077] lines 3-4 reputation for service or unethical business practices; see page 2 [0017] line 9 better shipping terms, hence at least two criteria, including measure of quality and shipping cost or type, are explicitly stated, all other criteria are implied by the **complex search criteria** method));

presenting a price in association with that selected product (see page 2 [0027] lines 6-7 whereby the nodes (defined as computer/server or gateway representing a merchant) that wish to respond return the request (by buyer using complex search

criteria) with their offer, construed by examiner as presenting that effective price, and a URL to the product site).

However, they fail to disclose the feature of performance monitoring of the search engine (e.g. time involved in searching).

However, Examiner takes Official Notice that employing performance monitoring techniques are old and well known in the art. (e.g. see Oulu et al. (6792460) abstract, lines 1-2). Therefore, it would have been obvious for a person having ordinary skill in the art at the time of the invention to modify the invention of Kraft to use these old and well known resources. One would have been motivated to do so in order to determine what modifications to modify the system for improved performance and concurrently provide performance reporting.

However, they fail to disclose an effective price and said connection parameter comprising one or more of a time-to-live indication, a multiple connection indication, pre-fetched price information, pre-opened connections, pres-search products, and a dead link indication.

However, Catan discloses the features of an effective price and connection parameter comprising a time-to-live indication (see column 7, line 30 'discounted (effective) price, and see column 29, lines 5-18 'time-to-live').

Both Kraft and Catan disclose a system and method for managing dynamic pricing information via search engine(s). Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify the invention of Kraft to include the feature as taught by Catan of reducing search time via incorporation in the search

engine taxonomy a time-to-live constraint in order to enable transactions to be completed more quickly.

Claim 2: Kraft discloses a system and method of real-time price comparisons searching for multi-variable information relating to prices by sellers of a selected product including the steps of

searching for stated prices provided by sellers of a selected product (see page 1 [0012] lines 5-7 whereby a user/buyer, on a network, can enter specific search requests using *complex search criteria*; also see [0027], lines 3-7 whereby system searches for the lowest available price and receiving offers from suppliers);

presenting that a price in association with that selected product (see col 2 [0027] lines 6-7 whereby the nodes (representations of sellers) return the request (for selected product) with their offer, construed by examiner as effective price).

However, they fail to disclose the feature of performance monitoring of the search engine (e.g. time involved in searching).

However, Examiner takes Official Notice that employing performance monitoring techniques are old and well known in the art. (e.g. see Oulu et al. (6792460) abstract, lines 1-2). Therefore, it would have been obvious for a person having ordinary skill in the art at the time of the invention to modify the invention of Kraft to use these old and well known resources. One would have been motivated to do so in order to determine what modifications to make to the system for improved performance and concurrently provide performance reporting.

However, they fail to disclose the feature of performance monitoring of the search engine (e.g. time involved in searching).

However, Examiner takes Official Notice that employing performance monitoring techniques are old and well known in the art. (e.g. see Oulu et al. (6792460) abstract, lines 1-2). Therefore, it would have been obvious for a person having ordinary skill in the art at the time of the invention to modify the invention of Kraft to use these old and well known resources. One would have been motivated to do so in order to determine what modifications to modify the system for improved performance and concurrently provide performance reporting.

However, Kraft fails to disclose the features of an effective price and applying those discounts and presenting the effective price and said connection parameter comprising one or more of a time-to-live indication, a multiple connection indication, pre-fetched price information, pre-opened connections, pres-search products, and a dead link indication.

However, Catan discloses the features of a connection parameter comprising a time-to-live indication (see column 7, line 30 'user can be given (presented an applied) discounted (effective) price, and see column 29, lines 5-18 'time-to-live').

Both Kraft and Catan disclose a system and method for managing dynamic pricing information via search engine(s). Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify the invention of Kraft to include the feature as taught by Catan of reducing search time via incorporation in the search

engine taxonomy a time-to-live constraint in order to enable transactions to be completed more quickly.

Claim 4: Kraft and Catan disclose the invention as in claims 1 and 2 above. Kraft further discloses the feature including steps of filtering information regarding sellers of offering the selected product in response to at least one restriction selected by a potential buyer (see page 1 [0012] lines 5-7 whereby a user/buyer, on a network, can enter specific search requests using *complex search criteria*, which examiner construes as filtering information regarding sellers of offering the selected product in response to at least one restriction/criteria by a potential buyer).

Claim 5: Kraft and Catan disclose the invention as in claims 1 and 2 above. Kraft further discloses the feature including steps of obtaining at least some of that multi-variable information from a source other than a potential seller of that selected product (see page 5 [0077] lines 1-4 whereby the user at node B (seller B) may investigate the credibility of the merchant at node C (seller C) and find that the merchant at node C has a reputation for poor service or unethical business practices).

Claim 6: Kraft and Catan disclose the invention as in claims 1 and 2 above. Kraft further discloses the feature including steps of sorting information regarding sellers of offering the selected product in response to price (see FIG 3B whereby 350 returns query results to query engine 355 which sorts sellers offers against buyer criteria, 360).

Claim 7: Kraft and Catan disclose the invention as in claims 1 and 2 above. Kraft further discloses the feature wherein a search restriction is selected by a potential buyer, that search restriction including at least one of: a maximum effective price, a minimum measure of quality, a minimum measure of reputation, a minimum shipping type, a maximum amount of product ordered (see page 1 [0012] lines 5-7 whereby a user/buyer, on a network, can enter specific search requests using *complex search criteria*, which examiner construes as search restrictions; and examiner also construes complex as at least one of the above criteria; e.g. reputation for service (see page 5 [0077] lines 3-4 reputation for service or unethical business practices; see page 2 [0022] line 2 shipping, etc. as criteria; hence at least two criteria are explicitly stated, all other criteria are clearly implied by the *complex search criteria* method)).

Claim 8 and 9: Kraft and Catan disclose the invention as in claim 1 and 2 above. However, they fail to disclose the feature wherein at least some of that multi-variable information is entered from an offline source and searching for a first element of the multi-variable information and searching independently for a second element of the multi-variable information.

Catan discloses the feature of implementing offline data transfer operations according to various embodiments (see column 7, lines 50-54 (offline data transfers) and column 7, lines 22-24 and column 6, lines 20-25 whereby the database can link user-profile information to search for multi-variable information to increase the relevancy

of (search) responses, also see column 6, lines 39-46 whereby receiving a menu (search request) with several options (first, second element etc.) being included in the transmission, examiner interprets a menu with several options as multi-variable information with more than one element whereby the search engine searches each of these elements 'to increase the relevancy of responses')

Kraft and Catan disclose a method of searching discount/coupon incentive information. Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify the invention of Kraft to include the methods of 'offline' data transfers, and multi-variable information as taught by Catan, in order for the buyer to have more relevant information relating to purchase decisions.

Claim 11: Kraft and Catan disclose the invention as in claims 1 and 2 above. Kraft further discloses the feature wherein discounts include at least one of: a reduction in shipping cost, an upgrade in shipping type without associated increase in price, and wherein those discounts are either unconditional or conditional on an amount of product ordered (see page 2 [0017] lines 8-9 whereby subsequent to the peer-to-peer network offers, the merchant responds to the buyer with a lower price or better shipping terms, examiner construes better shipping terms as an upgrade in shipping type without associated increase in price).

Claim 13: Kraft and Catan disclose the invention as in claims 1 and 2 above.

However Kraft does not explicitly disclose the feature wherein the steps of searching also include information relating to products not exactly equal to the selected product and they fail to disclose a 'degree of match' parameter.

However, examiner takes Official Notice that making recommendations with respect to 'degrees of similarity between individual items' is old and well known in the art (e.g. see Linden et al. (6,266,649) abstract, lines 1-15, note Amazon.com as assignee, also see column 1, lines 23-32 whereby a 'technique commonly used by recommendations services is known as content-based filtering,... which based upon an analysis of item content, attempt to identify items which are similar items that are known to be of interest to the user...and then use this profile to search for other web pages (other products) that include some or all of the content).

Therefore, it would have been obvious for a person having ordinary skill in the art at the time of the invention to modify the invention of Kraft to use these old and well known resources. One would have been motivated to do so in order to provide more choices to consumers thereby increasing the transaction rate.

Claim 15-19: Kraft and Catan disclose the invention as in claims 1 and 2 above. However, Kraft fails to disclose the features wherein connection parameters are measured and reported to users.

However, it would have been obvious for a person having ordinary skill in the art at the time of the invention to modify the invention of Kraft to include connection parameters for measurement and reporting. (The features wherein:

the searching frequency is in response to the time to live indication; the connection parameter comprises a connection reliability indication; the connection parameter comprises a number of transactions indication; the connection parameter comprises a frequency of transactions with the seller; caching the multi-variable information and the connection parameter before receiving a request from a user to present the effective price; are all considered as designer preferences and are not given patentable weight.)

One would have been motivated to do so in order to encourage customers/users to use the system more often via meaningful feedback on their searches.

Claim 20: Kraft and Catan disclose the invention as in claims 1 and 2 above. However, Kraft fails to disclose the feature wherein the information relating to products not exactly equal to the selected product is responsive to a degree-of-match parameter.

However, it would have been obvious for a person having ordinary skill in the art at the time of the invention to modify the invention of Kraft to include a feature wherein the information relating to products not exactly equal to the selected product is responsive to a degree-of-match parameter.

One would have been motivated to do so in order to encourage customers/users to use the system more often via the increase number of selections available to satisfy their search criteria.

6. Claim 3 is rejected under 35 U.S.C. 103(a) being anticipated by Kraft (20040098377) in view of HERZ et al. (20010014868).

Claim 3: Kraft and Catan disclose the invention as in claim 1 and 2 above.

However, they fail to disclose the feature whereby *aggregating and presenting* to buyer the aggregated information regarding sellers offering the selected product.

HERZ et al. discloses a system and a method using a search engine whereby offers with similar profiles are grouped together, examiner construes grouping as aggregating (see page 2, [0006], lines 1-2).

Kraft and Catan, and HERZ disclose a method of searching and offering discounts via a search engine. Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify the invention of Kraft to include grouping and presenting offers with similar profiles, as taught by HERZ, in order for the buyer to have more relevant information relating to purchase decisions.

7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kraft (20040098377) in view of Caton (6491217) and further in view of LOHSE (20030069785).

Claim 10: Kraft and Catan disclose the invention as in claim 1 and 2 above. However, they fail to disclose the feature wherein discounts include at least *one of*: a fixed reduction in price, a percentage reduction in price, or a *reduction in price contingent on an amount of product ordered*.

LOHSE discloses a method for substantially instant electronic generation of volume discount coupons based on projected total dollar amounts consumers spend (see abstract lines 1-3 whereby examiner construes volume discount coupons as reduction in price contingent on an amount of product ordered).

Kraft and Catan, and LOHSE disclose a method for electronic commerce between buyers and sellers providing the lowest effective pricing. Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify the search method of the combination of Kraft and Catan to include the volume discounts as taught by LOHSE in order to provide buyers with the lowest effective price.

8. Claim 12 is rejected under 35 U.S.C. 103(a), as applied to claims 1 and 2, as being unpatentable over Kraft (20040098377) in view of Catan(6491217) and further in view of Schierholt (20050149377).

Claim 12: Kraft and Catan disclose the invention as in claim 1 and 2 above. However, they fail to disclose the feature whereby the steps of searching also include information relating to packages of products including the selected product; and the computed effective price is responsive to a minimum effective price for those packages of products.

Schierholt discloses the method whereby information relating to packages of products including the selected product and the computed effective price is responsive to a minimum effective price for those packages of products (see Page 2 [0015]

whereby from an original customer product order, identifying at least one potential bundled product package containing more than the requested product order; also see [0016] whereby the special price may be a discount price that is determined according to a pricing and discount strategy; examiner construes special price as the computed effective price in response to buyer price request).

Kraft and Catan and Schierholt disclose a method for electronic commerce between buyers and sellers providing the lowest effective pricing. Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify the engine search method of the invention of Kraft, to include the bundled product package as taught by Schierholt in order to provide buyers with the lowest effective price.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 1-13 and 14-20 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Basani et al. (6748447) discloses parameters consisting of location, destination node performance, distance from other destination nodes, transmission speed of said destination node's network connection, and reliability of said network connection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL H. GOLDMAN whose telephone number is (571)270-5101. The examiner can normally be reached on Monday thru Thursday 6:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Myhre can be reached on 571-272-6722. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

mhg  
January 12, 2008

/Jean Janvier/  
Primary Examiner, Art Unit 3688